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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 JENNIFER E. MARTIN,

7 Plaintiff,

8 v.

9 GRAYS HARBOR COMMUNITY
HOSPITAL, et al.,

10 Defendants.

CASE NO. C11-5388BHS

ORDER GRANTING MOTION
TO DISMISS

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12 This matter comes before the Court on Defendants' motion to dismiss pursuant to
13 Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (Dkt. 17). The Court
14 has considered the pleadings filed in support of the motion and the remainder of the file
15 and hereby grants the motion for the reasons stated herein.

16 On November 4, 2011, Defendants filed a motion to dismiss Plaintiff Jennifer E.
17 Martin's ("Martin") claims against them under Rules 12(b)(1) and 12(b)(6). Dkt. 17.
18 Martin failed to file an opposition to the motion.

19 Local Rule 7(b)(2) states that "[i]f a party fails to file papers in opposition to a
20 motion, such failure may be considered by the court as an admission that the motion has
21 merit." However, the Ninth Circuit has held that a motion for summary judgment should
22 not be granted simply because there is no opposition, even if the failure to oppose

1 | violated a local rule. *See Henry v. Gill Indus.*, 983 F.2d 943, 950 (9th Cir. 1993). Rather,
2 | the moving party must demonstrate the absence of genuine issues of material fact,
3 | regardless of whether the party against whom the motion for summary judgment is
4 | directed has filed any opposition. *See Cristobal v. Siegel*, 26 F.3d 1488, 1491 (9th Cir.
5 | 1994).

6 | Here, even if the Ninth Circuit's principle regarding unopposed motions for
7 | summary judgment applies to Defendants' motion to dismiss, the motion should be
8 | granted. Defendants have shown that Martin should be judicially stopped from litigating
9 | this case as the real party in interest because she improperly valued the pending claim
10 | against Defendants in her bankruptcy filings, and the bankruptcy court ordered discharge
11 | of her debt. *See* Dkt. 17. Accordingly, the Court concludes that Defendants' motion to
12 | dismiss should be granted.

13 | The Court, having considered the pleadings filed in support of the motion and the
14 | remainder of the file, does hereby find and **ORDER** that Defendants' motion to dismiss
15 | (Dkt. 17) is **GRANTED** and the claims alleged in Martin's complaint are **DISMISSED**
16 | **with prejudice**.

17 | Dated this 6th day of December, 2011.

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20 | BENJAMIN H. SETTLE
21 | United States District Judge
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